IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10287 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B'NAGAR MUNICIPAL CORPORATION

Versus

BHAVNAGAR ELECTRICITY COMPANY LTD

Appearance:

1. Special Civil Application No. 10287 of 1993

MR JR NANAVATI for Petitioners.

MR SB VAKIL for Respondent.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 09/04/2004

ORAL JUDGEMENT

The petitioner Bhavnagar Municipal Corporation has preferred the present Special Civil Application under Article 227 of the Constitution of India challenging the judgment and order dated 29.6.1993 passed by the learned Assistant Judge, Bhavnagar in Regular Civil Appeal No. 2 of 1990 and allowing the same and quashing and setting

aside the order passed by the competent officer in Eviction Case No. 134 of 1986-87.

2. That Bhavnagar Electricity Company Limited is occupant of land bearing Survey Nos. 321, 322/1, 322/2 and 322/3, out of which dispute has aisen with regard to land admeasuring 9400 sq.meteres of land only. That the said land was taken on lease by Bhavnagar Electricity Co.Ltd., from Bhavnagar Municipality which was valid upto 10.10.1988. That it seems that during continuation of lease as according to Bhavnagar Municipality there was a breach of conditions of Kabulat dated 16.2.1979, more particularly Conditions No.3 and 9 of the Kabulat they approached the competent authority under the provisions of Gujarat Public Premises (Eviction of Unauthorised Occupation) Act, 1972 (hereinafter referred to as "the Act") and competent authority issued a notice upon respondent No.1 herein the lessee on 23rd January 1987 under Section 4(a) and Section 5 of the said Act. It was alleged in the said notice that there is a godown in the land admeasuring 9400 sq.metres of land which was required to be used for industrial purpose. However, as the said land was not used, there was a breach of Condition No.3 of Kabulat dated 16.2.1979. A detailed reply came to be filed by the respondent Electricity Company (Lessee) and ultimately the competent authority under the provisions of the said Act by judgment and order dated 30th December 1989 allowed the said application by holding that there is a breach of Condition No.3 of the agreements and the Kabulat dated 16th February 1979 and the Lease Deed dated 22nd March 1982 and therefore the respondent No.1 herein is unauthorised occupant of 9400 sq.meters of land and therefore the competent authority exercising powers conferred under sub-section (1) of Section 5 of the Act passed an order directing the respondent No.1 herein to vacate the aforesaid premises on or before 30th December 1989.

3. That being aggrieved and dissatisfied with the said order passed by the competent authority dated 31st March 1990, the respondent No.1 herein preferred an appeal before the appellate authority, i.e. Assistant Judge, Bhavnagar, which was numbered as Regular Civil Appeal No. 2 of 1990. That the learned Assistant Judge, Bhavnagar by his judgment and order dated 29th June 1993 allowed the said appeal by quashing and setting the order dated 31st March 1990 passed by the competent authority in Eviction Case No. 134/1986-87, and quashing and setting aside the order passed by the competent authority with regard to eviction and dismissed the Eviction Case

accordingly.

4. The aforesaid judgment and order passed by the Assistant Judge, Bhavnagar dated 29th June 1993 has given rise to the present Special Civil Application under Article 227 of the Constitution of India.

5. Shri J.R. Nanavati, learned advocate appearing for the petitioner has challenged the findings recorded by the learned Assistant Judge, Bhavnagar given in the order passed by the appellate Court. On the other hand, Shri S.B. Vakil, learned Senior Advocate appearing on behalf of the respondent, has supported the said finding of the learned Assistant Judge. Mr. Vakil has further contended that even if the said finding is erroneous, the respondent would support the order of the learned Judge on the other points, such as that the notice dated 23rd January 1987 issued by the competent authority under Section 4 of the Act is invalid inter alia on the ground that the same has been given for the alleged breach of Condition No.3 of Kabulat dated 16.2.1979, whereas the said Kabulat came to an end after execution of the Lease Deed dated 9.12.1981 or 22nd March 1982. It is further submitted that the said notice dated 23rd January 1987 proceeds on the ground of non-user of the godown and quarters in the land and not non-use of the land. It is submitted that clause 3 in the Kabulat does not refer to non-use, but refers to using the premises for the purpose other than industrial use etc.

6. Order XII, Rule 2 of the Civil Procedure Code provides that "Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2) pronounce judgment on all issues".

This case does not fall under sub-rule (2) of Rule 2 of Order XII. Whether the Civil Procedure Code applies or not, the same would be a sound procedure. According to me, it would have been better if the learned Assistant Judge had pronounced the judgment on all the issues arising in the case. Therefore, this Court, without going into the merits of the question whether the respondent is not an unauthorised occupant, as held by the learned Assistant Judge, is inclined to quash and set aside the order passed by the learned Assistant Judge, and remands the appeal to the District Court to Bhavnagar for rehearing and redeciding the appeal on all the issues including the issue whether the respondent is or is not an unauthorised occupant and and also inclusive of the issue as to validity of the notice under Section 4 of the

Act as well as validity of the order dated 30th December 1989 passed by the competent Officer and such other questions as may be raised by the either party in the appeal.

7. Accordingly, the order passed by the learned Assistant Judge dated 29.6.1993, in Regular Civil Appeal No. 2 of 1990, is hereby set aside without going into the merits whether the respondent is or is not an unauthorised occupant within the meaning of the said Act, and the matter is remanded to the learned District Judge, Bhavnagar, for rehearing and redeciding the Regular Civil Appeal No.2 of 1990 afresh in light of the observations made hereinabove. At the cost of repetition, it is also made clear that this Court does not express any opinion on the merits of the case either in favour of the petitioner or in favour of the respondent. At this stage, Shri Vakil has submitted that in case the order of learned District Judge is adverse to the respondent No.1 herein, then an appropriate order be passed for not executing the same for a reasonable period. Accordingly, it is ordered that if the order of the learned District Judge is adverse to the respondent No.1 herein, then the same shall not be executed for a period of one month to enable the respondent No.1 herein to approach the higher forum.

In view of the fact that the matter is now remanded to the learned District Judge for rehearing and redeciding the same, it will be in the fitness of things that the order passed by the competent authority, against which the Regular Civil Appeal No. 2 of 1990 was filed, should be kept in abeyance. Under the circumstances, pending the appeal by the learned District Judge, there shall be stay of execution of the order dated 30th December 1989 passed by the competent authority.

8. In view of the fact that the appeal is of 1990, it will be in the fitness of things to direct the learned District Judge, Bhavnagar to see that the appeal, on remand, is decided and disposed of as early as possible and preferably before six months from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.